

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MELINDA ELLIS,

Plaintiff,

v.

ALESSI TRUSTEE CORPORATION; et al.,

Defendants.

3:09-CV-0428-LRH-RAM

ORDER

Before the court is third-party defendants' motion to strike third-party plaintiff's first amended complaint. Doc. #73.¹ Third-party plaintiffs filed an opposition (Doc. #78) to which third-party defendants replied (Doc. #79).

I. Facts and Background

In 2003, defendant/third-party plaintiff Alessi Trustee Corporation ("ATC") was formed as a separate and distinct entity from defendant/third-party plaintiff Alessi & Koenig, LLC ("Koenig"). ATC contacted then State of Nevada Department of Business and Industry's Financial Institutions Division ("FID") commissioner L. Scott Walshaw ("Walshaw") to inquire whether ATC required a license to perform non-judicial foreclosure work in Nevada. In a February 20, 2003 letter, Walshaw stated that under NRS § 649 *et seq.*, he believed that ATC did not need to obtain a

¹ Refers to the court's docket number.

1 license. Third-party defendant Stephen Kondrup (“Kondrup”) concurred in the exempt status when
2 he became a deputy commissioner and, during his tenure, repeatedly stated that there was no
3 problem with ATC conducting non-judicial foreclosure proceedings because ATC was not a
4 community manager which required licensing. Thereafter, ATC began performing non-judicial
5 foreclosure work.

6 In 2005, NRS Section 649 was amended to remove various licensing exemptions. Amended
7 NRS 649.020(3)(a) provides that a community manager is anyone “engaged in the management of
8 a common-interest community if the community manager, or any employee, agent or affiliate of the
9 community manager, performs or offers to perform any act associated with the foreclosure of a
10 lien.” In light of the 2005 amendments, Kondrup and FID investigated ATC’s collection operations.
11 On September 12, 2008, Kondrup and FID issued a cease and desist order against ATC finding that
12 they were a community manager subject to licensing.

13 On July 15, 2009, underlying plaintiff Melinda Ellis (“Ellis”) filed a class action complaint
14 against ATC and Koenig alleging that defendants, acting as a collection agency for a homeowner’s
15 association, violated the Fair Debt Collection Practices Act. On August 10, 2009, defendants filed a
16 third-party complaint against third-party defendants Kondrup and FID alleging that the
17 September 12, 2008 cease and desist order directing ATC to cease and desist all collection
18 operations was improper. Doc. #7. In response, third-party defendants filed a motion to dismiss the
19 third-party complaint (Doc. #34) which was granted by the court (Doc. #53).

20 More than a year later, on June 23, 2011, third-party plaintiffs filed an amended third-party
21 complaint without leave of court. Doc. #72. Thereafter, third-party defendants filed the present
22 motion to strike. Doc. #73.

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1 **II. Discussion**

2 Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, the court may strike a filing
3 for “any redundant, immaterial, impertinent, or scandalous matter.” FED. R. CIV. P. 12(f). In their
4 motion, third-party defendants argue that the amended third-party complaint is an impertinent filing
5 because it was filed without leave of court. *See* Doc. #73. The court agrees.

6 Pursuant to Rule 15 of the Federal Rules of Civil Procedure, a party may amend its pleading
7 after a responsive pleading has been filed only with the opposing party’s written consent or by
8 leave of court. FED. R. CIV. P. 15(a)(2). Here, neither requirement was met. Further, no motion to
9 amend was ever filed by third-party plaintiffs, nor was a copy of the proposed amended third-party
10 complaint provided to the court for its review in accordance with LR 15-1. Accordingly, the court
11 shall grant third-party defendants’ motion and strike the amended third-party complaint.

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13 IT IS THEREFORE ORDERED that third-party defendants’ motion to strike (Doc. #73) is
14 GRANTED. The clerk of court is directed to STRIKE third-party plaintiffs’ amended complaint
15 (Doc. #72).

16 IT IS FURTHER ORDERED that third-party defendants’ motion to dismiss (Doc. #81) is
17 DENIED as moot.

18 IT IS SO ORDERED.

19 DATED this 8th day of November, 2011.



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22 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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